

Changes in the RTK Rules Readopted 12-13-2004

- The Department added two exemptions from annual Community Right to Know reporting:
 - 1) N.J.A.C. 7:1G-3.2(g), the Department is exempting employers from submitting annual CRTK Surveys for unstaffed sites (such as cellular telephone towers, cable boxes, switching boxes, and well stations).
 - 2) N.J.A.C. 7:1G-3.2(h), the Department is exempting “non-users” and “users with inventories below thresholds” from annual reporting after a CRTK Survey is initially filed. Facilities are required to notify the Department of any changes to their status as a “non-user” or “user below threshold,” change in location, or the overall status of the business.
- N.J.A.C. 7:1G-4.1(c) lists the information that employers must provide on the RPPR. This information consists of data elements, otherwise known as “materials accounting” data, on hazardous substance inputs and outputs. The Department has added at new N.J.A.C. 7:1G-4.1(c)1 a requirement that input quantities shall not differ from output quantities in facility-level materials accounting data by more than five percent.
- At N.J.A.C. 7:1G-5.3, the Department is requiring that, beginning with reporting year 2004, all facilities subject to the reporting requirements contained at N.J.A.C. 7:1G-4.1 must submit the RPPR electronically using the Department’s internet-based on-line reporting system. The Department has

added a hardship exemption from this requirement for those facilities that do not have access to a computer or the ability to perform on-line reporting, upon verified written justification of such hardship. In the event of a malfunction in the State's internet-based on-line reporting system, the Department would approve appropriate extensions as warranted. However, the Department would not approve any extension due to a malfunction in a facility's electronic information technology system, unless the facility can verify the malfunction and promptly file the report by paper submittal.

- The Department has replaced the existing penalty schedule at N.J.A.C. 7:1G-7.7 with a new rule that categorizes each violation as "minor" or "non-minor" for purposes of applying grace periods for compliance.
- N.J.A.C. 7:1G-7.7 (b) - The following violations are non-minor:

1. Failure of an employer to complete and submit to the Department a Community Right to Know Survey for each facility covered by this chapter by March 1 of the year following the reporting year in accordance with N.J.A.C. 7:1G-3.1 and 5.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

2. Failure of an employer to report all EHSs as required under N.J.A.C. 7:1G-3.1 on the Community Right to Know Survey or Release and Pollution Prevention Report in accordance with N.J.A.C. 7:1G-3.1, 4.1 and 5.1. The penalty for this violation is based on the number of substances omitted, and is \$500 if 10 or fewer substances are omitted and is \$1,000 if more than 10 substances are omitted.

3. Failure of an employer to transmit a copy of the Community Right to Know Survey for each covered facility by March 1 of the year following the reporting year to the local fire and police departments, local emergency planning committee, and the Right to Know County Lead Agency of the county in which the facility is located in accordance with N.J.A.C. 7:1G-3.1 and 5.1. The penalty for this violation is \$500 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100 per day.

4. Failure of an employer to provide on the Community Right to Know Survey all information listed at N.J.A.C. 7:1G-3.1(c)1-5 for each Environmental Hazardous Substance (EHS) that meets or exceeds the thresholds listed in N.J.A.C. 7:1G-3.1(b). The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

5. Failure of an employer to retain a copy of the Community Right to Know Survey and/or Release Pollution Prevention Report at each facility and make it available upon request to facility employees within five business days of the request in accordance with N.J.A.C. 7:1G-5.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

6. Failure of an employer to make available the Community Right to Know Survey and/or the Release and Pollution Prevention Report for the most recent Survey year to the Department, its local designees, or emergency responders in accordance with N.J.A.C. 7:1G-5.1. The penalty for this violation is \$500 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100 per day.

7. Failure to provide the environmental release, throughput, waste transfer and pollution prevention information required by the Environmental Survey in accordance with N.J.A.C. 7:1G-4.1(c) and any pollution prevention information required pursuant to the Pollution Prevention Act on the RPPR in accordance with N.J.A.C. 7:1G-4.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, at in amount not to exceed \$1,000 per day.

8. Failure of an employer to submit to the Department information clarifying any statement made on the Community Right to Know Survey and/or Release and Pollution Prevention Report within 30 days of notification or subsequent date specified by the Department in accordance with N.J.S.A. 7:1G-5.2. The penalty for this violation is \$500 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100 per day.

- N.J.A.C. 7:1G-7.7 (c) - The following violations are minor:

1. Failure of an employer to submit to the Department a completed Release and Pollution Prevention Report by July 1 of the year following the reporting year in accordance with N.J.A.C. 7:1G-4.1 and 5.1. The penalty for this violation is \$1,000 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$1,000 per day.

2. Failure of an employer to submit a copy of the completed Release and Pollution Prevention Report by July 1 of the year following the reporting year to the county lead agency of the county in which the facility is located in accordance with N.J.S.A. 7:1G-5.1. The penalty for this violation is \$500 for each violation. The Department may assess an additional penalty for each day that the violation continues, in an amount not to exceed \$100 per day.

- N.J.A.C. 7:1G-7.7(d) - The Department has provided a grace period of 30 days for any violation identified as minor under (c) above, provided the following conditions are met:

1. The violation is not the result of the purposeful, knowing, reckless, or criminally negligent conduct of the person responsible for the violation;
2. The activity or condition constituting the violation has existed for less than 12 months prior to the date of discovery by the Department or local government agency; and
3. The person responsible for the violation has not been identified in a previous enforcement action by the Department as responsible for the same or a substantially same violation at the same facility within the preceding 12-month period.

- N.J.A.C. 7:1G-7.7(e) For any violation determined to be minor under (c) and (d) above, the following provisions apply:

1. The Department shall issue a notice of violation that:
 - i. Identifies the condition or activity that constitutes the minor violation and the specific statutory and regulatory provision or other requirement violated; and
 - ii. Specifies that a penalty may be imposed unless the minor violation is corrected and compliance is achieved within the specified grace period.
2. If the person responsible for the minor violation corrects the violation and demonstrates to the Department that compliance has been achieved within the

specified grace period, the Department shall not impose a penalty for the violation.

3. If the person responsible for the minor violation fails to demonstrate to the Department -that the violation has been corrected and compliance achieved within the specified grace period, the Department may, in accordance with the provisions of this subchapter, impose a penalty that is retroactive to the date the notice of violation under (e)1 above was issued.